

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ASOCIACIÓN DE EDUCACIÓN PRIVADA
DE PUERTO RICO, INC., et al.,

Plaintiffs,

v.

ALEJANDRO GARCÍA PADILLA,
SECRETARY OF THE DEPARTMENT OF
CONSUMER AFFAIRS OF THE
COMMONWEALTH OF PUERTO RICO,

Defendant.

Civil No. 03-1213 (JAF)

OPINION AND ORDER

Plaintiff Asociación de Educación Privada de Puerto Rico, Inc. brings this motion under 42 U.S.C. § 1988 (2006), seeking attorneys' fees following the final adjudication of this case. Docket Document No. 83-1. Defendant opposes, Docket Document No. 88, and Plaintiff replies, Docket Document No. 91.

I.

Factual and Procedural History

Plaintiffs brought an action under 42 U.S.C. § 1983 (2006) against Defendant Alejandro García Padilla, Secretary of the Department of Consumer Affairs of the Commonwealth of Puerto Rico ("DACO"), on March 4, 2003. Docket Document No. 1. On December 13, 2005, the district court issued a judgment in favor of Plaintiffs, finding that Rule 11 of DACO's Regulation 6458 and Puerto Rico's Law

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1 No. 116, of May 18, 2004, violated the First Amendment of the United
2 States Constitution. Docket Document No. 65. The court accordingly
3 granted Plaintiffs' request for a permanent injunction enjoining DACO
4 from enforcing Rule 11 and Law 116 against private schools in Puerto
5 Rico. Id. Defendant appealed to the First Circuit. Docket Document
6 No. 68. On April 12, 2007, the First Circuit affirmed in part and
7 reversed in part, remanding the case to the district court to modify
8 the judgment in accordance with its finding that Rule 11's disclosure
9 requirement was not unconstitutional. Docket Document No. 81.
10 Plaintiff Asociación de Educación Privada moved for attorneys' fees
11 on May 4, 2007. Docket Document No. 83. We issued a final judgment
12 pursuant to the First Circuit's findings on June 6, 2007. Docket
13 Document No. 87. Defendant opposed Plaintiff's motion for attorneys'
14 fees on June 12, 2007. Docket Document No. 88. Plaintiff replied on
15 September 14, 2007. Docket Document No. 91.

16 II.

17 Analysis

18 Plaintiff has submitted a detailed accounting of its attorneys'
19 expenses and hours worked. Docket Document No. 83-3. The attorneys
20 billed Plaintiffs at a rate of \$135 an hour for out-of-court work and
21 \$250 an hour for court appearances. Id. The total amount came to
22 \$59,011.29. Id.

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1 Defendant argues that we should deny Plaintiff's request or
2 reduce the award because (1) Plaintiff only partially prevailed,
3 having failed to eliminate the disclosure requirement of Rule 11;
4 (2) Plaintiff's request is untimely; and (3) the request is
5 unreasonably excessive because it includes telephone conferences.
6 Docket Document No. 88. We address each of these arguments in turn.

7 Pursuant to § 1988(b), a court may award the prevailing party
8 attorneys' fees for suits brought under § 1983. § 1988(b). Even
9 Plaintiffs who substantially prevail may not necessarily recover the
10 totality of their requested fees. See Culebras Enters. Corp. v.
11 Rivera-Ríos, 846 F.2d 94, 102 (1st Cir. 1988). Instead, we must
12 calculate a reasonable fee award using the lodestar method. Id. "In
13 implementing this lodestar approach, the judge first calculates the
14 time counsel spent on the case, subtracts duplicative, unproductive,
15 or excessive hours, and then applies prevailing rates in the
16 community (taking into account the qualifications, experience, and
17 specialized competence of the attorneys involved)." Gay Officers
18 Action League v. Puerto Rico, 247 F.3d 288, 295 (1st Cir. 2001).
19 Once calculated, "the lodestar represents a presumptively reasonable
20 fee, although it is subject to upward or downward adjustment in
21 certain circumstances." Lipsett v. Blanco, 975 F.2d 934, 937 (1st
22 Cir. 1992).

23 Defendant argues that we should reduce the award of attorneys'
24 fees to reflect the fact that Plaintiffs did not prevail on every

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1 part of their claim. Docket Document No. 88. Upon review of the
2 complaint, however, we find that the First Circuit's holding that
3 Rule 11's disclosure requirement passes constitutional muster
4 represents a relatively minor defeat for Plaintiffs, who
5 substantially prevailed on all of their claims. Docket Document
6 No. 37. We, therefore, will not reduce the amount of the award on
7 these grounds. Gay Officers Action League, 247 F.3d at 294-96.

8 Next, Defendant contends that we should deny Plaintiff's request
9 because it is untimely. Docket Document No. 88. Defendant refers to
10 Local Rule 39 of the First Circuit, requiring parties to seek
11 attorneys' fees "within thirty days of the date of entry of the final
12 circuit judgment." Id. In this case, the First Circuit issued a
13 final judgment on April 12, 2007. Docket Document No. 81. Plaintiff
14 requested attorneys' fees on May 4, 2007. Docket Document No. 83.
15 We, therefore, find that Plaintiff's request was timely.

16 Finally, Defendant asserts that it was unreasonable of
17 Plaintiffs' attorneys to bill their clients for telephone
18 conferences. Docket Document No. 88. We fail to see why this is so.
19 We do not detect any duplicative, excessive or unproductive charges
20 in Plaintiffs' attorneys' accounting. Docket Document No. 83-3. We
21 also find that the hourly rates are reasonable in light of community
22 standards. See Quiles Quiles v. Henderson, No. 99-1868, 2007 U.S.
23 Dist. LEXIS 18468, at *8 (D.P.R. Mar. 12, 2007) (surveying Puerto
24 Rico market rates and finding rates of over \$200 for experienced

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1 attorneys to be reasonable). We, therefore, grant Plaintiff's request
2 for attorneys' fees in the amount of \$59,011.29.

3 **III.**

4 **Conclusion**

5 For the reasons stated herein, we **GRANT** Plaintiff's request for
6 attorneys' fees, Docket Document No. 83-1, and award Plaintiffs'
7 attorneys \$59,011.29.

8 **IT IS SO ORDERED.**

9 San Juan, Puerto Rico, this 5th day of November, 2007.

10 s/José Antonio Fusté
11 JOSE ANTONIO FUSTE
12 Chief U. S. District Judge